IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

BORETA LIMITED, plaintiff, v. CONSTANT FINANCE LIMITED defendant.	CIVIL ACTION NO. 2011-018 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

TO: DENNIS J. REEDER, counsel for plaintiff
DAVID M. STRAUSS, counsel for defendant

I. INTRODUCTION:

Plaintiff Boreta Limited ("Boreta"), seeks recognition and enforcement of a final Russian Federation arbitration award (the "Award"), rendered in Boreta's favor against the defendant Constant Finance Limited ("Constant"). The court enters judgment for Boreta on the following grounds.

1. The Award is enforceable as a judgment in the Republic of the Marshall Islands (the "Marshall Islands"), by virtue of the provisions of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards; and

2. The Award is enforceable as a judgment in the Marshall Islands under the provisions of the Marshall Islands Uniform Foreign Money-Judgment Recognition Act, Title 30, Chapter 4, of the Marshall Islands Revised Code.

II. BACKGROUND:

The record in this matter shows the following:

On January 31, 2011, Boreta, a company organized under the laws of the Republic of Cyprus filed a complaint against Constant, a company organized under the laws of the Marshall Islands, to domesticate the Award so that it could be enforced as a judgment in the Marshall Islands, to register the Award as a judgment in the Marshall Islands, and to enter judgment in the Marshall Islands against Constant in the amount of US$12,669,678.00. Subsequent to the filing of an answer by Constant on March 28, 2011, Boreta filed a Motion for Summary Judgment (the "Motion"). Constant filed an Opposition to the Motion along with a Motion to Adjourn. The Motion requested that this Court enter judgment on behalf of Boreta based on the Arbitration Agreement entered into by the parties and the finality of the Award. The hearing on the Motion was initially held on February 2, 2012, and final arguments were presented to the Court on June 28, 2012.

III. STATEMENT OF FACTS:

The parties entered in a "Master Agreement on General Conditions of Conducting Operations on the Derivatives Market." The Master Agreement contained an arbitration clause within the article entitled, "Governing Law and Jurisdiction." The arbitration clause stated:

> "Any dispute, conflict or claim arising from or in connection with this Agreement, including any disputes relating to its existence, validity or termination, shall be referred for consideration and final resolution by arbitration in accordance with the Rules of the International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of the Russian Federation in the City of Moscow, which Rules shall be considered included in the text of this Clause by reference. The arbitration panel shall consist of three arbitrators. The language of the arbitration proceeding shall be Russian." (Agreement ¶ 11.2).

From February 1, 2008 to September 7, 2009, the parties engaged in fifteen completed transactions involving the forward purchase and sale of currencies, predominately Ukrainian Griyvna (UAH) against U.S. Dollars (USD). On September 4, 2009, the parties executed a transaction with Boreta as seller and Constant as purchaser. The transaction amount was 52,800,000UAH against $20,000,000USD. (Transaction 1). On September 7, 2009, the parties executed a transaction with Boreta as seller and Constant as purchaser. The transaction amount was 52,800,000UAH against $10,000,000USD. (Transaction 2). Constant defaulted on its obligations under the Master Agreement with respect to the two transactions, by not paying Boreta US$8,195,065.26 under Transaction 1, and US$4,043,186.90 under Transaction 2, for a total of US$12,238,252.16.

Boreta invoked the arbitration clause contained in Paragraph 11.2 of the Master Agreement and filed a claim against Constant to recover the US$12,238,252.16, plus US$58,743.61 in interest from date of the defaults to the date of filing with the International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of the Russian Federation in the City of Moscow (the "ICAC"). Boreta's claim also asked the ICAC to order Constant to pay Boreta's arbitration costs and chose two arbitrators to hear the case.

Boreta's Statement of Claim and supporting documents were mailed to Constant by the Secretariat of the ICAC on December 4, 2009. The correspondence contained a request for a response to the claim and nominations for the chief and reserve arbitrators.

Constant failed to forward its nominations in a timely manner and a panel of three arbitrators was named by the ICAC, without objection by either party.

Boreta amended its claim several times to further document Transactions 1 and 2 and to enter legal opinions regarding the application of English law to the allegations contained in its

claim.

On March 31, 2010, Constant filed an application to dismiss Boreta's claim based on the fact that Constant's Director, Mr. M. Yu. Sadnonikov, did not sign the Master Agreement or the Confirmations evidencing Transactions 1 and 2. As a result, the Master Agreement and Confirmations were to be considered "Nonconcluded." Constant asked for a preliminary ruling that the ICAC was an "incompetent" (lacked jurisdiction) to consider the dispute. The IAAC tribunal denied Constant's application based on what is essentially a theory of estoppel.

On May 4, 2010, the ICAC received another application from Constant requesting dismissal. This application reiterated the lack of authority argument and claimed that the claims arising from Transactions 1 and 2 were not "subject to defense in the Territory of the Russian Federation." The ICAC disregarded this defense as well.

Significantly Constant did not dispute the terms of the Master Agreement or that it had entered into Transactions 1 and 2.

The claim and defenses were heard by the Arbitral panel during five hearings.

On September 29, 2010, the ICAC issued its award, granting Boreta the sum of US$12,238,252.16 in damages and US$52,107.48 for "reimbursement of expenses (attorney fees and costs) from Constant.

In its answer to the complaint filed by Boreta in this court, Constant raised six affirmative defenses (*see* Answer ¶¶7-12), including defenses based on MIRCP 12(b)(6) and (12)(b)(1), and waiver, (*id.* ¶¶ 7–9). Another defense stated: Plaintiff's claims are barred because the arbitration award is not final since on December 30, 2010, Constant filed a motion to set aside the award in the Arbitrazh Court of the City of Moscow on the grounds, in sum that (1) the arbitral procedure was not in accordance with the agreement of the parties; (2) Constant

was unable to present its case; and (3) the arbitral award is contrary to the public policy of Russia. (*Id.* ¶ 12.)

Constant filed a number of appeals to the Award with the Russian Court all of which were eventually denied. The parties have stipulated the final appeal with the Russian Court was denied on March 14, 2012.

The Republic of the Marshall Islands has adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) by accession on December 21, 2006, with the Treaty coming into force on March 31, 2007.

IV. DISCUSSION

A. Summary Judgment Standard.

Summary judgment for the moving party must "be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." MIRCP 56(c).

As the moving party, Boreta bears the burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*,477 U.S. 317, 323-24 (1986). Once Boreta has met that burden, Constant, as the nonmoving party, must go beyond the pleadings and identify facts which show a genuine issue for trial. *Id.* at 324; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("A party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of his pleading, but . . . must set forth facts showing that there is a genuine issue for trial."); *see also* MIRCP 56(e).

In order to raise a "genuine" issue of fact the "evidence [must be] such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. With respect

to the materiality of facts, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* Finally, there must be more than a "scintilla" of evidence favoring the nonmoving party to create an issue of material fact. *Sumners v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).

In the instant case, the record is totally devoid of any evidence establishing any genuine issue of material fact that could possibly preclude summary judgment in Boreta's favor and therefore Boreta is entitled to Summary Judgment under the provisions of the New York Convention and the Marshall Islands Uniform Foreign Money-Judgments Recognition Act.

B. The Award is enforceable under the provisions of the Marshall Islands Uniform Foreign Money-Judgments Recognition Act (the "UFMJRA"), codified at Title 30, Marshall Island Revised Code, Chapter 4.

The UFMJRA applies to any foreign judgment granting recovery of a sum of money "that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending, or subject to appeal." Title 30 MIRC § 403. A foreign judgment meeting those requirements is conclusive between the parties to the extent it grants recovery of a sum of money, except as provided in Section 405 of the Act. *Id.* § 404. As explained by the court in *Nadd v. Le Credit Lyonnais, S.A.*, 804 So. 2d 1226 (Fla. 2001), when applying Florida's enactment of the UFMJRA:

> [T]he first question in the recognition process is whether or not the foreign judgment is "final and conclusive and enforceable' in the country where the judgment was rendered. . . . . Because there is no argument that the judgment does not meet the above-stated criteria, it is entitled to recognition unless one of the grounds for non-recognition enumerated in [the Act] is applicable.

804 So. 2d at 1231 (footnote omitted). Because Constant has not raised any argument that the Russian Federation award against it was not final, conclusive and enforceable in Russia and that

the appeal process has been fully exhausted, the judgment is entitled to recognition unless one of the grounds for non-recognition listed in Section 405 applies. Constant has not even alleged, much less presented any evidence regarding, any of the enumerated defenses.

Section 405 lists a number of exceptions, which this court deems to be Marshall Islands codified public policy considerations, under which a court must deem a foreign judgment not conclusive or may elect not to recognize the foreign judgment:

> (1) A foreign judgment is not conclusive if:
>
> (a) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
>
> (b) the foreign court did not have personal jurisdiction over the defendant;
>
> (c) the foreign court did not have jurisdiction over the subject matter; or
>
> (d) the foreign court does not recognize or enforce judgments of any other foreign nation.
>
> (2) A foreign judgment need not be recognized if:
>
> (a) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
>
> (b) the judgment was obtained by fraud;
>
> (c) the cause of action on which the judgment is based is repugnant to the public policy of the Republic;
>
> (d) the judgment conflicts with another final and conclusive judgment;
>
> (e) the proceeding in the foreign court was contrary to an agreement between the parties under which

> the dispute in question was to be settled otherwise than by proceedings in the court; or
>
> (f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

Id. § 405. "The Court may only deny recognition if one of the exceptions explicitly stated in the UFMJRA applies to the facts presented." *Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co.*, ___ F. Supp. 2d ___, No. 2:06-cv-01798-FMC-SSx 2009 WL 2190187, at *5 (C.D. Cal. July 21, 2009) (*citing Guinness PLC v. Ward*, 955 F. 2d 875, 885 (4th Cir. 1992)).

To the extent that Constant's stated defenses go to the merits of the Award itself, they are ineffective. "When a party is given the opportunity to litigate issues in a foreign forum, he or she is precluded from collaterally attacking the resulting judgment in the recognition state." *Bank of Nova Scotia v. Tschabold Equip. Ltd.*, 51 Wash. App. 749, 759, 754 P.2d 1290 (1988) (applying Washington UFMJRA and recognizing Canadian judgment). Particularly where a Defendant opts to not participate in foreign litigation and a default judgment results, as happened here, the Defendant should not be given a second bite of the apple in the recognition jurisdiction.

> If we were to allow [the judgment debtor] to present his claims now, after opting out of the Taiwanese lawsuit, it would certainly undermine the goal of judicial efficiency. The courts have a strong interest in avoiding duplicative proceedings, and the [judgment debtor] had a full and fair opportunity to assert his claims in the first action. It would be a poor use of our court time, and unfair to the [judgment creditor], if we were to afford [the judgment debtor] a new forum simply because he was unwilling to avail himself of the original forum chosen by the [judgment creditor].

Chou v. Shieh, No. G031589, 2004 WL 843708, at *12 (Cal. Ct. App. Apr. 20, 2004) (unpublished) (granting summary judgment recognizing Taiwanese judgment in UFMJRA action).

The record simply does not present any genuine issue of material fact relating to any of the grounds specified in the UFMJRA which would permit the Court to refuse recognition of the Award.

C. The Award granted on September 29, 2010, in favor of Boreta by the ICAC is final for purposes of enforcement under the New York Convention to which the Marshall Islands is a signatory.

The legal framework of international commercial arbitration in Russia is contained in the Law of the Russian Federation No. 5338-1 (July 7, 1993), entitled, "On International Commercial Arbitration" ("Law on ICA"). This law is modeled on the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) of 1985.

The Russian Federation and the Marshall Islands are both parties to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention") and the Russian legislation incorporates many of its provisions and principles. The reliance on the New York Convention is important, and perhaps critical, because the possible affirmative defenses that can be raised in an ICAC arbitration essentially mirror those which may be raised in a subsequent action to enforce an award under the New York Convention. Hence, the "Circumstances of the Case" (Findings of Fact) and the "Reasons for Award" (September 29 2010 Award) by the ICAC and the June 1, 2011 and March 14, 2012, "Dismissal" of Constant's appeals by the Moscow Arbitration Court form the factual and legal bases to rebut Constant's affirmative defenses in the Marshall Islands enforcement action.

Proceedings of ICAC are conducted pursuant to an Annex to the Law on ICAC (also referenced as "Regulations on ICAC") and the Rules of the ICAC October 18, 2005 ("ICAC Rules").

All claims relating to international commercial arbitration are tried in the arbitrazh

courts of the Russian Federation. The proceedings in the arbitrazh courts are mainly regulated by the Arbitrazh Procedure Code of the Russian Federation ("APC").

Under Russian law, an arbitral award cannot be revised on the merits by Russian Courts or by any other authority. Russian courts consistently reject claims seeking revision of ICAC awards and decisions on their merits. This policy was affirmed in a ruling of the Supreme Arbitrazh Court dated May 18, 2009, which upheld a lower court's refusal to revise an award or decision of the ICAC.

Russian courts have the authority to reverse awards under certain limited circumstances. A request for cancellation of an award is the exclusive remedy for challenging an arbitral award *See* Law of the Russian Federation on International Commercial Arbitration No. 5338-1 art 34 (July 7, 1993). An arbitral award may be challenged only by filing a request for its cancellation and submitting evidence demonstrating that:

> One of the parties to the arbitration agreement referred to in Article 7 was in any way incapacitated or that the arbitration agreement is invalid by virtue of the law chosen by the parties to govern the arbitration agreement; or, if the parties did not specify the governing law, by virtue of the laws of the Russian Federation; or
>
> The party was not duly notified of the appointment of an arbitrator or arbitration hearing or for another reason is unable to state its case; or
>
> The award was made in respect of a dispute not covered in the arbitration agreement or not falling within the scope of the arbitration agreement, provided however, that if the arbitral award contains any decisions on the matters covered by the arbitration agreement and such decisions can be separated from the decisions on the matters not covered by the arbitration agreement, then only the decisions that are not covered by the arbitration agreement may be so cancelled; or
>
> The arbitral tribunal was formed or the arbitration proceedings

were conducted in violation of the arbitration agreement between the parties, provided that the arbitration agreement is not inconsistent with any of the provisions of this Law which cannot be excluded by the parties' agreement, or if no arbitration agreement was concluded, that the arbitral tribunal was formed or the arbitration proceedings were conducted in violation of this Law, or

the court determines that:

the dispute is not allowed to be resolved through arbitration by virtue of the laws of the Russian Federation; or

the arbitral award contradicts the public policy of the Russian Federation.

Id.

The September 29, 2010 Award of the ICAC was final as of that date for four reasons. First, the parties agreed in their Arbitration Agreement that any decision of the ICAC would be final. Second, the Regulations and Rules of the ICAC state that such an award is final and enters into force as of the date of issuance. Third, the appeal rules applicable to ICAC Awards do not include any mechanism analogous to a stay of judgment. Finally, on March 14, 2012, the Moscow Arbitration Court denied Constant's final appeal in full. As a result, the Marshall Islands enforcement action need not be stayed pending the outcome of any further appeals of the Award by Constant in Russia.

The parties agreed that any decision of the ICAC would be final. The arbitration clause in the parties' agreement states:

> Any dispute, conflict or claim arising from or in connection with this Agreement, including any disputes relating to its existence, validity or termination, shall be referred for consideration and final resolution by arbitration in accordance with the Rules of the International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of the Russian Federation in the City of Moscow, which Rules shall be considered included in

> the text of this Clause by reference. The arbitration panel shall consist of three arbitrators. The language of the arbitration shall be Russian.

(Agreement ¶ 11.2

This is a classic boiler-plate arbitration clause for Agreements to be performed in the Russian Federation dating from Soviet times (cf: Misha Knight, *"How to Do Business With the Russians"* Quorum Press, 1987 Page 225-226.) The other common variant is to specify arbitration in Stockholm under the Rules of the Stockholm Chamber of Commerce, whose rules closely follow the UNICTAL Model Arbitration Rules. (Arbitration Institute of the Stockholm Chamber of Commerce Website, *"About the SCC")*. The SCC, founded in 1917, has a longer institutional presence and was recognized in the 1970's by the United States and the Soviet Union as a neutral center for the resolution of East - West trade disputes. (Arbitration Institute of the Stockholm Chamber of Commerce Website, *"About the SCC")*

Based on the record to date, both parties freely chose the ICAC to arbitrate any disputes. More importantly, the parties specifically agreed that any decision of the ICAC would be final. (Master Agreement ¶ 11.2.) The parties could have chosen the Stockholm Chamber of Commerce or any other agency or venue for resolution of their disputes. Further, Constant did not object to the jurisdiction of the ICAC at any time during the initial proceedings. Therefore, Constant either agreed to the ICAC's jurisdiction or waived the issue.

Section 40 of the Law of the Russian Federation No. 102-FZ, entitled "On arbitration (third party) courts in the Russian Federation" (July 24, 202), states:

> Decisions made by an arbitration (third party) court may be challenged by a party to the dispute within three months from the date of its receipt by such party unless the arbitration agreement provides for finality of the arbitration (third party) court's decision.

Law No. 102-FZ, § 40 ("Challenging an arbitration (third party) court decision to a competent court of the (Russian) Federation").

The Supreme Arbitrazh Court Information Letter No. 96 (December 22, 2005) contains "guidance" (instruction), which states that a party cannot challenge an Award in court of the arbitration agreement if no right to challenge is provided for in the finality of the award. In such a case, the state court should terminating proceedings on reversing the award. This guideline has found its way into international commercial arbitration proceedings in the Russian Federation including the ICAC. The decisions of the Supreme Arbitrazh Court in Case No. BAC-15525/09 (December 29, 2009) and the Moscow Region Federal Arbitrazh Court in Case No. KG-A40/9433 (October 8, 2009), both rejected appeals for reversal of an ICAC award when the arbitration agreement provided for the finality of any award. These decisions are considered to be precedential and persuasive authority as for courts of lower instance given the stature of the courts which issued them.

Again the language of the parties' arbitration clause states that disputes are to be submitted for "final resolution by arbitration" in accordance with ICAC Rules. Thus, section 40 of Law No. 102-FZ and the arbitration clause preclude an appeal of the ICAC award.

In *Chromalloy v. Aeroservices v. Arab Republic,* 939 F. Supp. 907 (D.D.C. 1996), a federal district court in the United States enforced an award rendered in Egypt even after an Egyptian court vacated it. The district court focused on language in the arbitration agreement providing that the "decision of the [arbital panel] shall be final and binding and cannot be made subject to any appeal or other recourse."

Based on *Chromalloy* Absent an arbitration clause stating that the decision of the arbitrator is final, a court in the United States generally would not enforce an award rendered in

Russia that had been vacated by a Russian court.

The Regulations and Rules of the ICAC state that unless otherwise specifically stated, an award is final and enters into force as of the date of issuance.

When an ICAC award becomes final and enters into force is dictated by procedural rules, that in this case the Regulation on ICAC and the ICAC rules. Section 5 of the Regulation on the ICAC states in relevant part: "ICAC decisions shall be implemented within the period of time fixed by the award. If no period is fixed in the award, the award shall be implemented immediately." ICAC Rules § 5. The ICAC Rules also state that an award made by the ICAC shall be final and binding from the date thereof, unless a particular implementation period is specified in the award. *Id.* § 44.

§39(1) of the ICAC Rules defines the date of the award as the date on which the last arbiter signs the award. In addition, the parties' arbitration clause specifically incorporates the Rules of the ICAC by reference. (*See* Agreement ¶ 11.2.) Accordingly, by agreement of the parties, the Award came into force and effect on September 29, 2010.

The ICAC can grant requests from the parties to set a different time for the award to come into force. For example, in Decision No. 112/2007 (November 18, 2008), the ICAC granted a request from a successful claimant to order payment of the award within ten days from the date of the arbitral award's entry into force.

The appeal rules applicable to ICAC awards do not include any mechanism analogous to a stay of judgment.

Under Article 34 of the Law on the ICA, a request for cancellation is the exclusive remedy for challenging an arbitral award. In Russia, the 2002 Code of Arbitrazh Procedure specifically provides that provisional measures may be ordered in support of arbitration. The Arbitration

Court has authority to issue injunctive relief, ranging from preliminary attachments, so-called "freezing injunctions," to enjoining stockholder meetings. However this power does not appear to have been extended to stays of judgment pending appeal. Article 34(4) of the Law on the ICA states that:

> The court which has been asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside procedure for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside

The procedural device of a stay of judgment pending appeal does not appear to exist in the Laws and Rules of the Russian Federation on commercial arbitration.

The Moscow Arbitration Court has denied Constants' final appeal in full. On March 14, 2012, the Moscow Arbitration Court denied Constants' final appeal in full. Hence, the September 29, 2010 ICAC Award has not been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made, thus defeating Constant's affirmative defense based on New York Convention article V(e). (*See* Constant Answer ¶ 12.)

The Award of the ICAC is "Final" for purposes of enforcement under the New York Convention under a number of theories. First, Boreta and Constant Finance agreed to arbitrate disputes before the ICAC under ICAC Rules. They also agreed that the ICAC's decision would be final. The arbitration clause also specifically incorporates the ICAC Rules by reference. (*See* Agreement ¶ 11.2.) Second, Section 5 of the ICAC Rules states in relevant part: "ICAC decisions shall be implemented within the period of time fixed by the award. If no period is fixed in the award, the award shall be implemented immediately." Section 44 of the ICAC Rules states that

"an Award made by the ICAC shall be final and binding from the date thereof, unless a particular implementation period is specified in the award." Third, the appellate rules applicable to ICAC Awards do not include any mechanism analogous to a stay of judgment. Fourth, the June 1, 2011 Ruling of the Moscow Arbitration Court denied Constant Finances' appeal in full, so there is no currently no application to set aside or suspend the award. The Marshall Islands enforcement action need not be stayed pending the outcome of any further appeals of the September 29 award in Russia because no superior court in Russia has accepted an application to hear a new or renewed appeal. The enforcement action need not be stayed even if a further appeal is granted because the language of Article VI of the New York Convention regarding "adjournment" is permissive, using the phrase, "may, if it considers it proper...." The opinions in the United States District Courts have ruled that enforcement proceedings should continue pending appeals in other countries' courts. In *Chromalloy v. Aeroservices v. Arab Republic,* for example, the district court enforced language in an arbitration agreement that the arbitration decision would be final. In *MGM Productions Group,* judicial proceedings had just been commenced by the nonprevailing party. And in the *Unrveshprom* case, proceedings continued in the face of deliberately obstructive behavior and activities by the non-prevailing party.

IV. CONCLUSION

There are no factual matters at issue in this case. All factual issues have been addressed in the Motion. There are no other material factual issues to be determined by this Court. The Award is final, no other appeals may be undertaken or filed by Constant. The Award is fully enforceable as a judgment in the Republic of the Marshall Islands under the provisions of the New York Convention and the Marshall Islands Uniform Money-Judgments Enforcement Act.

VI. ORDER

Based upon the foregoing, it is ORDERED as follows:

1. The Award is domesticated in the Marshall Islands and may be enforced as a judgment in the Marshall Islands;

2. The Award is registered as a judgment if the Marshall Islands;

3. Judgment is entered in favor of Boreta in the amount of US$12,669,678.00;

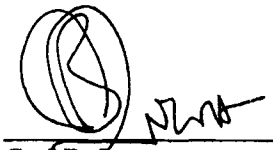
4. Boreta is awarded costs in the amount of US$105.00;

5. The judgment shall accrue interest at the rate of 9% per annum from the date of judgment until such judgment is satisfied in full.

6. Upon application by Boreta the court will appoint a Receiver for the purpose of determining and gathering such assets of Constant that may exist to satisfy the judgment; and

7. Upon application by Boreta the court shall issue a Writ of Execution against the property of Constant not exempt from execution.

Dated: July 9, 2012



Carl B. Ingram
Chief Justice